

# Congress of the United States

Washington, DC 20515

June 27, 2023

The Honorable John G. Roberts, Jr.  
Chief Justice  
Supreme Court of the United States  
1 First Street NE  
Washington, DC 20543

Dear Chief Justice Roberts:

We are all former prosecutors, judges, and law enforcement officials, and we write to express our grave concerns about the Supreme Court's lack of internal structure to properly enforce the ethical standards to which you have repeatedly asserted that the Court adheres. It has become abundantly clear to us that the current internal mechanism employed by the Court is not sufficient to prevent either the real, or appearance of, impropriety of its members or to hold to account justices who break ethics rules. This has further undermined public confidence in the institution, which is now at an all-time low.<sup>1</sup>

In recent months, public reporting has revealed serious allegations of ethical improprieties by Justice Clarence Thomas and Justice Samuel Alito. These reports raise serious questions about the integrity and legitimacy of the Court. As Chief Justice of the Supreme Court, it is your obligation to preserve and uphold the American people's trust in the Court.

Although you have stated that justices voluntarily adhere to the Court's "Statement of Ethics Principles and Practices," the Court's failure to conduct a meaningful and transparent internal investigation of these allegations undermines the public's faith that those ethical standards are in fact being followed.

Your latest comments on this matter only raise further concerns that the Court does not have the necessary and proper institutional structure to address allegations of ethical improprieties. On May 23, 2023, you stated during a speech that you were "confident" that the Court will convince the public that it "adheres to the highest standards of conduct."<sup>2</sup>

Despite your insistence that the Court can police itself, you have provided no rationale or vision for how the Court will do so. Moreover, the Court's failure to conduct a meaningful, independent investigation into allegations against Justices Thomas and Alito only underscores widespread concerns that the Supreme Court is not subject to a code of ethics or an adequate enforcement process.

We therefore write to urge you to aggressively address recent allegations of ethical violations and conflicts of interests. *First*, we recommend that you establish an independent investigative

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<sup>1</sup> *Public confidence in the U.S. Supreme Court is at its lowest since 1973*, NORC at the University of Chicago, (May 17, 2023), <https://apnorc.org/projects/public-confidence-in-the-u-s-supreme-court-is-at-its-lowest-since-1973/>.

<sup>2</sup> Robert Barnes, *Roberts says Supreme Court will address ethics issues*, The Washington Post, (May 23, 2023), <https://www.washingtonpost.com/politics/2023/05/23/supreme-court-ethics-roberts/>.

body within the Court that can provide transparency and accountability through exhaustive investigations into alleged ethical improprieties. *Second*, we recommend that you establish an ethics counsel charged with providing advice to justices on ethical issues, including disclosure requirements and recusal.

### **Allegations against Justice Thomas**

We are especially concerned about the numerous recent reports of Justice Clarence Thomas's highly questionable ethical decisions, including conflicts of interests related to his wife and other beneficial financial relationships with billionaire and political donor Harlan Crow and Leonard Leo, who oversees a multi-billion-dollar dark money operation to influence the Supreme Court. These include allegations that Justice Thomas's wife, Ginni, may have had a vested interest in cases that came before Court related to the January 6 insurrection, which Justice Thomas nonetheless ruled on (in favor of Ginni Thomas's preferred outcome).

In addition, supplemental reporting indicates that Ginni Thomas may have been paid by Mr. Leo, who has substantial business before the Court, and that Justice Thomas accepted gifts and benefits from Mr. Crow that he failed to properly disclose.

The Court does not appear to have conducted an investigation into any of these allegations. Neither the Court, nor Justice Thomas have ever addressed the allegations related to the January 6 insurrection, nor has there been any response to allegations related to payments to Ginni Thomas from Mr. Leo. In response to the allegations related to Mr. Crow, the Court's only response was a one-paragraph statement that Justice Thomas issued about his relationship with Mr. Crow – which began after Justice Thomas joined the Court – and the guidance he received from other judges and colleagues about his disclosure obligations.

This is insufficient.

Using a revamped and independent internal investigative process, we urge that investigative body to engage in a substantial investigation – culminating with a public report – on the many allegations of ethical lapses and conflicts of interests by Justice Thomas, including, but not limited to:

1. In the aftermath of the 2020 election, while his wife was actively strategizing with the White House chief of staff on overturning the election results and attending the January 6 “Stop the Steal” rally, Justice Thomas continuously ruled on cases before the Court that directly and indirectly involved the election results and the January 6 insurrection at the U.S. Capitol.<sup>3</sup> Among them was a case requiring Trump's White House records be turned over to the House Select Committee on the January 6 Attack. Justice Thomas was the sole dissenting voice on this matter.<sup>4</sup>
2. Thomas's acceptance and failure to disclose lavish vacations and travel perks from Mr. Crow, including private jet flights and a nine-day Indonesian excursion on a chartered yacht, valued at \$500,000, among others. Justice Thomas has allegedly claimed that this luxury trip paid for by someone he met after becoming a Supreme Court justice, and other instances like it, are “not reportable.”<sup>5</sup>

<sup>3</sup> Ryan Nobles, Annie Grayer, Zachary Cohen and Jamie Gangel, *January 6 committee has text messages between Ginni Thomas and Mark Meadows*, CNN.com, (Mar. 25, 2023), <https://www.cnn.com/2022/03/24/politics/ginni-thomas-mark-meadows-text-messages/index.html>.

<sup>4</sup> *Trump v. Thompson*, 595 U. S. \_\_\_\_ (2022).

<sup>5</sup> Joshua Kaplan, Justin Elliott, & Alex Mierjeski, *Clarence Thomas and the Billionaire*, ProPublica (Apr. 6, 2023), <https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>.

3. Mr. Crow's purchase of a string of properties owned by Thomas and his family in Savannah, Georgia for \$133,363. Soon after the home was purchased, Crow undertook \$36,000 in renovations by an award-winning architect. Thomas never disclosed his sale of the Savannah properties.<sup>6</sup> Those properties include the home where the Justice's mother continues to live rent-free.<sup>7</sup>
4. Crow's payment of \$6,000 a month in tuition for Thomas's grandnephew, who was under the legal guardianship of Justice Thomas and his wife, to attend private boarding school. The price tag for his education was approximately \$100,000 in value, according to public records of tuition rates at the schools. Thomas did not report the tuition payments from Crow on his annual financial disclosures.<sup>8</sup>
5. Thomas's acceptance of extravagant gifts from Crow, ranging from a bible belonging to Frederick Douglass, valued at \$19,000, to a donation of \$150,000 to build a new wing named for the Justice on a Savannah library that he visited frequently in his youth.<sup>9</sup>
6. Leonard Leo's arrangement for Thomas's wife, Virginia 'Ginni' Thomas, to be paid at least \$80,000 in fees from the Judicial Education Project – an organization with business in front of the Court. According to the underlying documentation, Leo emphasized to his conduit, political consultant Kellyanne Conway, that the paperwork should contain "[n]o mention of Ginni, of course."<sup>10</sup>
7. Crow's \$500,000 donation to a Tea Party group founded by Ginni Thomas, which also paid her a \$120,000 salary.<sup>11</sup>

The seriousness of these ethical lapses is further exacerbated by the fact that both Mr. Crow and Mr. Leo have had substantial business before the Court.

In January 2005, the Court declined to hear an appeal from an architecture firm that wanted more than \$25 million from Trammell Crow Residential. The company, founded by Crow's father in which Harlan maintains a stake, was accused of "allegedly misusing copyrighted building

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<sup>6</sup> *Id.*

<sup>7</sup> Victor Swezey, *Clarence Thomas' Mom Lived Rent-Free After Unreported Deal With GOP Donor*, The Daily Beast (Apr. 17, 2023), <https://www.thedailybeast.com/clarence-thomas-mom-lived-rent-free-after-deal-with-gop-donor-harlan-crow>.

<sup>8</sup> Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas Had a Child in Private School. Harlan Crow Paid the Tuition.*, ProPublica (May 4, 2023), [HYPERLINK "https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-scotus"](https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-scotus)<https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-scotus>.

<sup>9</sup> Kenneth Vogel, John Bresnahan, & Marin Cogan, *Justice Thomas's wife now lobbyist*, POLITICO (Feb. 4, 2011), <https://www.politico.com/story/2011/02/justice-thomass-wife-now-lobbyist-048812>.

<sup>10</sup> Emma Brown, Shawn Boburg, & Jonathan O'Connell, *Judicial activist directed fees to Clarence Thomas's wife, urged 'no mention of Ginni'*, The Washington Post (May 4, 2023), <https://www.washingtonpost.com/investigations/2023/05/04/leonard-leo-clarence-ginni-thomas-conway/>.

<sup>11</sup> Mike McIntire, *Friendship of Justice and Magnate Puts Focus on Ethics*, The New York Times (Jun. 18, 2011), <https://www.nytimes.com/2011/06/19/us/politics/19thomas.html>.

designs.”<sup>12</sup> The court’s one-sentence order denying the petition listed no recusals — an indication that Thomas participated in the decision and ruled in favor of Mr. Crow.

As the longtime leader of the Federalist Society, and now the head of the CRC Advisors, Leo has had extensive business before the Court. For example, in 2012, the same year Leonard Leo instructed Kellyanne Conway to pay Ginni Thomas while concealing her name, Leo’s Judicial Education Project submitted an amicus brief in *Shelby County v. Holder*, a case challenging the Voting Rights Act. In a 5-4 vote, Justice Thomas issued a concurring opinion striking down a critical provision of the landmark civil rights law.<sup>13</sup>

Title 28, United States Code, Section 455 requires a justice, federal judge or magistrate to disqualify (i.e., recuse) oneself in certain circumstances, including when a person within the third degree of relationship to either the judge or their spouse is “known by the judge to have an interest that could be substantially affected by the outcome of the proceeding.”<sup>14</sup> Here, there is little doubt that Thomas was aware or should have been aware of Mr. Crow’s and Mr. Leo’s interest in these cases. Yet neither the Court nor Justice Thomas has provided no explanation nor rationale for Justice Thomas’s decision not to recuse himself from any of these cases.

### **Allegations against Justice Alito**

Just last week, revelations surfaced that Justice Alito accepted extravagant gifts from major conservative donors, including Paul Singer, a hedge fund billionaire who has repeatedly asked the Court to rule on his business dealings. According to ProPublica, in early 2008, Leonard Leo organized and attended a luxury fishing trip, which he invited Mr. Singer to be a part of.<sup>15</sup>

The report alleges that Mr. Leo, who had just played a significant role in the Justice’s confirmation process, requested that Mr. Singer fly with Justice Alito to Alaska on the billionaire’s private jet — a flight that would likely exceed \$100,000 one way, according to the report’s estimates.<sup>16</sup>

Mr. Leo also arranged for Justice Alito’s stay, which was furnished by a major donor of Mr. Leo’s political group. The high-end fishing lodge, owned by the donor, reportedly charges more than \$1,000 a day.<sup>17</sup>

Following this trip, Mr. Singer’s hedge fund had business before the Court “at least 10 times in cases where his role was often covered by the legal press and mainstream media.”<sup>18</sup> Justice Alito

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<sup>12</sup> Zoe Tillman, *Clarence Thomas’s billionaire friend did have business before the Supreme Court*, Bloomberg (Apr. 24, 2023), <https://www.bloomberg.com/news/articles/2023-04-24/clarence-thomas-friend-harlan-crow-had-business-before-the-supreme-court#xj4y7vzkg>.

<sup>13</sup> Emma Brown, Shawn Boburg, & Jonathan O’Connell, *Judicial activist directed fees to Clarence Thomas’s wife, urged ‘no mention of Ginni*, The Washington Post (May 4, 2023), <https://www.washingtonpost.com/investigations/2023/05/04/leonard-leo-clarence-ginni-thomas-conway/>.

<sup>14</sup> 18 USC(b)(5)(iii)

<sup>15</sup> Joshua Kaplan, Justin Elliott, & Alex Mierjeski, *Justice Samuel Alito Took Luxury Fishing Vacation With GOP Billionaire Who Later Had Cases Before the Court*, ProPublica (Jun. 20, 2023), <https://www.propublica.org/article/samuel-alito-luxury-fishing-trip-paul-singer-scotus-supreme-court>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

has claimed that he was “not aware and had no good reason to be aware that Mr. Singer had an interest in any party,” despite the obvious reasons to the contrary.<sup>19</sup> Like Justice Thomas, Alito did not disclose these gifts or recuse himself when Singer’s interests were before the Court.

Just hours before the release of the ProPublica report, Justice Alito published an opinion piece in the Wall Street Journal preemptively disputing the assertions made by the report that he was obligated to disclose the gifts and recuse himself from Mr. Singer’s cases.

A portion of Justice Alito’s response included the incredulous notion that the seat on the private jet “would have otherwise been vacant” if he had not accepted Mr. Singer’s charity.<sup>20</sup> He also claims that until a few months ago, the financial disclosure requirements had a “[p]ersonal hospitality” exception; however, ethics experts have consistently made clear that “the law clearly requires that gifts of transportation, including private jet flights, be disclosed.”<sup>21</sup>

Finally, Justice Alito claimed that he had “no obligation to recuse in any of the cases that ProPublica cites,” arguing that he has only “spoken to Mr. Singer on no more than a handful of occasions” and never discussed Mr. Singer’s business activities or his cases before the Court.<sup>22</sup> This response borders on the absurd. If Justice Alito was not close friends with Mr. Singer, why did he think Mr. Singer was offering him a free trip on a private plane and free lodging?

Another troubling incident involving Justice Alito occurred in 2014, when Reverend Robert L. Schenck, an evangelical minister and former anti-abortion advocate, allegedly received advance notice of a decision on *Burwell v. Hobby Lobby*.<sup>23</sup> As was the case in *Dobbs v. Jackson Women’s Health Org.*, the leaked *Hobby Lobby* decision was written by Justice Samuel A. Alito.

In a letter to you, dated June 7, 2022, Rev. Schenck alleged that he received details of the decision from one of his donors, Gail Wright, prior to the Court’s ruling, while dining with Justice Alito and his wife.<sup>24</sup> While both the Alitos and Wrights admit to socializing with one another, both parties have publicly denied the allegations that Justice Alito or his wife, Martha-Ann, were the source of any leak.<sup>25</sup> But to the public’s knowledge, the Court conducted no further investigation -- nor asked Justice Alito questions on the record -- to evaluate these allegations.

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<sup>19</sup> Samuel Alito, *ProPublica Misleads Its Readers*, Wall Street Journal (Jun. 20, 2023), <https://www.wsj.com/articles/propublica-misleads-its-readers-alito-gifts-disclosure-alaska-singer-23b51eda>.

<sup>20</sup> *Id.*

<sup>21</sup> Joshua Kaplan, Justin Elliott and Alex Mierjeski, *Clarence Thomas Defends Undisclosed “Family Trips” With GOP Megadonor. Here Are the Facts.*, (Apr. 7, 2023), <https://www.propublica.org/article/clarence-thomas-response-trips-legal-experts-harlan-crow>.

<sup>22</sup> Samuel Alito, *ProPublica Misleads Its Readers*, Wall Street Journal (Jun. 20, 2023), <https://www.wsj.com/articles/propublica-misleads-its-readers-alito-gifts-disclosure-alaska-singer-23b51eda>.

<sup>23</sup> Jodi Kantor, *Allegation of Supreme Court Breach Prompts Calls for Inquiry and Ethics Code*, The New York Times (Nov. 20, 2022), <https://www.nytimes.com/2022/11/20/us/supreme-court-breach-alito.html>.

<sup>24</sup> Letter from Rev Robert L. Schenck to Hon. John Roberts (Jun. 7, 2022), <https://int.nyt.com/data/documenttools/roberts-letter-redacted-annotated/fb6e34bb904bfafa/full.pdf>.

<sup>25</sup> Josh Gerstein, *Justice Alito denies allegation of a leak in 2014 case about access to birth control*, POLITICO (Nov. 20, 2022), <https://www.politico.com/news/2022/11/20/justice-alito-birth-control-leak-allegations-2014-supreme-court-00069603>.



This is especially concerning because the *New York Times*' months-long investigation into Rev. Schenck's allegations was thorough and detailed, and included contemporaneous emails and conversations that "strongly suggested" he was aware of "the outcome and the author of the *Hobby Lobby* decision" in advance of its publication.<sup>26</sup>

According to one email obtained by The Times, the day after the Wrights shared a meal with Justice Alito and his wife in June 2014, Rev. Schenck received an email from Mrs. Wright that read, "Rob, if you want some interesting news please call. No emails."<sup>27</sup>

During that subsequent call, Mrs. Wright allegedly told Rev. Schenck that the impending decision would favor Hobby Lobby and that Justice Alito would be the author of that majority opinion.<sup>28</sup> Three weeks later, in a 5-4 vote, that is exactly what happened.

Shortly after these startling revelations in the *Times*, Senator Sheldon Whitehouse and Representative Hank Johnson wrote to you and the Court's Legal Counsel requesting specific responses to factual questions that were raised by the *Times* story as well as other public reporting.<sup>29</sup> Yet just eight days later, the Court's Counsel responded with a perfunctory one-page letter parroting denials of wrongdoing by Justice Alito and Mrs. Wright.<sup>30</sup>

Notwithstanding the fact that the *Times* had conducted a detailed, extensive investigation that included contemporaneous records, the Court did nothing to further investigate these allegations aside from asking the parties involved for their off-the-record response. As experienced, former independent investigators and judges, we know that this is simply not how proper investigations of serious allegations are conducted.

### **Dobbs Leak Investigation**

Despite the Court's decision not to conduct a proper investigation into allegations of misconduct by Justices Thomas and Alito, we know that you possess the ability to do such an investigation when you desire.

Approximately 24 hours after the draft majority opinion in *Dobbs* was leaked, you publicly directed the marshal of the Supreme Court to conduct an investigation to identify the leaker.<sup>31</sup> After an exhaustive and thorough investigation, the Court released a detailed public report on the matter, which included steps to address security concerns in the future.<sup>32</sup>

<sup>26</sup> Jodi Kantor & Jo Becker, *Former Anti-Abortion Leader Alleges Another Supreme Court Breach*, *The New York Times* (Nov. 19, 2022), <https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-roe-wade.html>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Letter from Sen. Sheldon Whitehouse & Rep. Hank Johnson, Jr. to Hon. John Roberts & Ethan Torrey (Nov. 20, 2022), [https://www.whitehouse.senate.gov/imo/media/doc/2022-11-20%20Letter%20to%20SCOTUS%20\(Operation%20Higher%20Court%20Follow-up\).pdf](https://www.whitehouse.senate.gov/imo/media/doc/2022-11-20%20Letter%20to%20SCOTUS%20(Operation%20Higher%20Court%20Follow-up).pdf).

<sup>30</sup> Letter from Ethan Torrey to Sen. Sheldon Whitehouse & Rep. Hank Johnson, Jr. (Nov. 28, 2022), <https://s3.documentcloud.org/documents/23320580/letter-from-scotus-counsel.pdf>.

<sup>31</sup> Press Release, Office of Public Information, Supreme Court of the United States (May 3, 2022), <https://www.documentcloud.org/documents/21846543-2022-050322-press-release>.

<sup>32</sup> Statement of the Court Concerning the Leak Investigation, Supreme Court of the United States (Jan. 19, 2023), [https://www.supremecourt.gov/publicinfo/press/Dobbs\\_Public\\_Report\\_January\\_19\\_2023.pdf](https://www.supremecourt.gov/publicinfo/press/Dobbs_Public_Report_January_19_2023.pdf)

We agree that the *Dobbs* leak was a serious matter that jeopardized the legitimacy of the Supreme Court and merited investigation. But the allegations against Justices Thomas and Alito similarly pose grave threats to the legitimacy of the Court. If, as you say, the Court is capable of upholding the highest ethical standards, then we hope you will accept our recommendations to establish an independent and transparent investigative body and separate ethics counsel to regain the trust and confidence of the American people.

Sincerely,



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Dan Goldman  
Member of Congress



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Henry C. "Hank" Johnson, Jr.  
Member of Congress



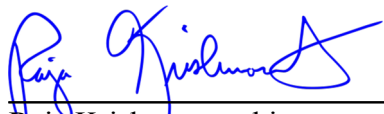
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Ted W. Lieu  
Member of Congress



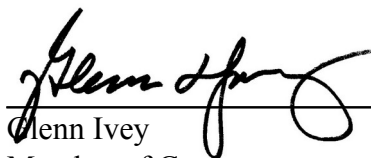
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Adam B. Schiff  
Member of Congress



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Raja Krishnamoorthi  
Member of Congress



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Glenn Ivey  
Member of Congress



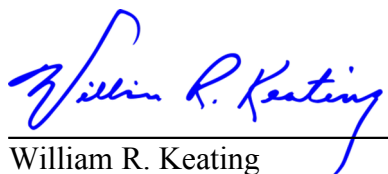
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Jamie Raskin  
Member of Congress



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C. A. Dutch Ruppersberger  
Member of Congress



William R. Keating  
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Mikie Sherrill  
Member of Congress



Jeff Jackson  
Member of Congress



Steve Cohen  
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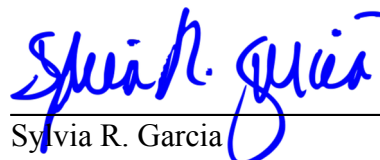
Lloyd Doggett  
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Stacey E. Plaskett  
Member of Congress



Jennifer Wexton  
Member of Congress



Sylvia R. Garcia  
Member of Congress